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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CLEMENTE ZAMARRIPA-MATA,

Plaintiff,

vs.

CITY OF VENTURA; and DOES 1-10,

Defendants.

CASE NO. CV 15-08348 SJO (JPR)

**STIPULATED PROTECTIVE
ORDER**

**NOTE CHANGES MADE BY THE
COURT**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may

1 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
2 enter the following Stipulated Protective Order. The parties acknowledge that this
3 Order does not confer blanket protections on all disclosures or responses to
4 discovery and that the protection it affords from public disclosure and use extends
5 only to the limited information or items that are entitled to confidential treatment
6 under the applicable legal principles. The parties further acknowledge, as set forth
7 in Section 11.3, below, that this Stipulated Protective Order does not entitle them
8 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
9 procedures that must be followed and the standards that will be applied when a
10 party seeks permission from the court to file material under seal.

11 **B. GOOD CAUSE STATEMENT**

12 Through the course of discovery, plaintiff has sought from defendant City of
13 Ventura, certain classes of documentation relating to the internal affairs
14 investigation / force review in connection with the incident giving rise to this
15 litigation, which defendants assert privileges afforded law enforcement through the
16 California Penal Code and California Evidence Code, the self-critical analysis /
17 deliberative process privilege and the official information privilege. Additionally,
18 documents relating to officer Jason Kohagen's personnel file such as applications,
19 background investigations, performance evaluations, complaint / disciplinary
20 history, and training will be sought, to which apart from the above mentioned
21 privileges, defendants assert the right to privacy protected by the U.S. and State of
22 California Constitution. The aforementioned documents / information have been
23 afforded protections to ensure officer safety and privacy, and are generally not
24 made available to the general public, via privileges, state or federal statutes, court
25 rules, case decisions, and common law.

Courts have deemed these materials discoverable under certain circumstances in 42 U.S.C. section 1983 excessive force litigation and believe that the interests of the both sides of the litigation can be served with a carefully drafted protective order. See Chism v. County of San Bernardino, 159 F.R.D. 531, 535 (C.D.Cal.1994) (endorsing use of protective order to keep internal use-of-force tactics secret); Hampton v. City of San Diego, 147 F.R.D. 227, 231 (S.D.Cal.1993) (endorsing use of protective order to protect privacy interests of police officers); Miller v. Pancucci, 141 F.R.D. 292, 301 (C.D.Cal.1992) (encouraging the use of well-tailored protective orders in discovery of police files).

Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

DEFINITIONS

1.1 Action: this pending federal law suit.

1.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

1.3 “CONFIDENTIAL” Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for

1 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
2 the Good Cause Statement.

3 1.4 Counsel: Outside Counsel of Record and House Counsel (as well as
4 their support staff)

5 1.5 Designating Party: a Party or Non-Party that designates information or
6 items that it produces in disclosures or in responses to discovery as
7 “CONFIDENTIAL.”

8 1.6 Disclosure or Discovery Material: all items or information, regardless
9 of the medium or manner in which it is generated, stored, or maintained (including,
10 among other things, testimony, transcripts, and tangible things), that are produced
11 or generated in disclosures or responses to discovery in this matter.

12 1.7 Expert: a person with specialized knowledge or experience in a matter
13 pertinent to the litigation who has been retained by a Party or its counsel to serve
14 as an expert witness or as a consultant in this Action.

15 1.8 House Counsel: attorneys who are employees of a party to this Action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 1.9 Non-Party: any natural person, partnership, corporation, association,
19 or other legal entity not named as a Party to this action.

20 1.10 Outside Counsel of Record: attorneys who are not employees of a
21 party to this Action but are retained to represent or advise a party to this Action
22 and have appeared in this Action on behalf of that party or are affiliated with a law
23 firm that has appeared on behalf of that party, including support staff.

24 1.11 Party: any party to this Action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and their
26 support staffs).

1 advance of the trial. See Kamakana v. City and County of Honolulu, 447 F.3d
2 1172, 1180-81 (9th Cir. 2006) (*distinguishing “good cause” showing for sealing
3 documents produced in discovery from “compelling reasons” standard when
4 merits-related documents are part of court record). Accordingly, the terms of this
5 protective order do not extend beyond the commencement of the trial for court
6 filed information previously designated as confidential or maintained pursuant to
7 this protective order.

8 9 **4. DESIGNATING PROTECTED MATERIAL**

10 **4.1 Exercise of Restraint and Care in Designating Material for Protection.**

11 Each Party or Non-Party that designates information or items for
12 protection under this Order must take care to limit any such designation to specific
13 material that qualifies under the appropriate standards. The Designating Party must
14 designate for protection only those parts of material, documents, items, or oral or
15 written communications that qualify so that other portions of the material,
16 documents, items, or communications for which protection is not warranted are not
17 swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations
19 that are shown to be clearly unjustified or that have been made for an improper
20 purpose (e.g., to unnecessarily encumber the case development process or to
21 impose unnecessary expenses and burdens on other parties) may expose the
22 Designating Party to sanctions.

23 If it comes to a Designating Party’s attention that information or items that it
24 designated for protection do not qualify for protection, that Designating Party must
25 promptly notify all other Parties that it is withdrawing the applicable designation.

1 4.2 Manner and Timing of Designations.

2 Except as otherwise provided in this Order (see, e.g., second paragraph of
3 section 4.2(a) below), or as otherwise stipulated or ordered, Disclosure or
4 Discovery Material that qualifies for protection under this Order must be clearly so
5 designated before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix, at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
11 contains protected material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the
13 protected portion(s) (e.g., by making appropriate markings in the margins).

14 A Party or Non-Party that makes original documents available for inspection
15 need not designate them for protection until after the inspecting Party has indicated
16 which documents it would like copied and produced. During the inspection and
17 before the designation, all of the material made available for inspection shall be
18 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
19 documents it wants copied and produced, the Producing Party must determine
20 which documents, or portions thereof, qualify for protection under this Order.
21 Then, before producing the specified documents, the Producing Party must affix
22 the “Confidential legend” to each page that contains Protected Material. If only a
23 portion or portions of the material on a page qualifies for protection, the Producing
24 Party must clearly identify the protected portion(s) (e.g., by making appropriate
25 markings in the margins).

1 (b) for testimony given in depositions that the Designating Party
2 identify the Disclosure or Discovery Material on the record, before the close of the
3 deposition.

4 (c) for information produced in some form other than documentary
5 and for any other tangible terms, that the Producing Party affix in a prominent
6 place on the exterior of the container or containers in which the information is
7 stored the legend "CONFIDENTIAL." If only a portion or portions of the
8 information warrants protection, the Producing Party, to the extent practicable,
9 shall identify the protected portion(s).

10 4.3 Inadvertent Failures to Designate.

11 If timely corrected, an inadvertent failure to designate qualified information
12 or items does not, standing alone, waive the Designating Party's right to secure
13 protection under this Order for such material. Upon timely correction of a
14 designation, the Receiving Party must make reasonable efforts to assure that the
15 material is treated in accordance with the provisions of this Order.

16 4.4 Redaction.

17 Defendants may redact highly personal and irrelevant confidential
18 information regarding police officer(s) contained in the personnel files and
19 documents, including, but not limited to, home addresses, phone numbers, names
20 of family members and references, personal injury and workers' compensation
21 information, salary information, tax return information, non-police-related
22 occupational and educational information, and similar information. In addition,
23 defendants may redact the name, address, and telephone number of non-party
24 witnesses contained in the confidential documents concerning incidents apart from
25 the incident giving rise to this litigation.

5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5.1 Timing of Challenges.

Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

5.2 Meet and Confer.

The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1, et seq. Any discovery motion must strictly comply with the procedures set forth in Local Rules 37-1, 37-2, 37-3 and 37-4.

5.3 Burden.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

6. ACCESS TO AND USE OF PROTECTED MATERIAL

6.1 Basic Principles.

A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 12 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a

1 location and in a secure manner that ensures that access is limited to the persons
2 authorized under this Order.

3 6.2 Disclosure of “CONFIDENTIAL” Information or Items.

4 Unless otherwise ordered by the Court or permitted in writing by the
5 Designating Party, a Receiving Party may disclose any information or item
6 designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this Action,
8 as well as employees of said Outside Counsel of Record to whom it is reasonably
9 necessary to disclose the information for this Action;

10 (b) the officers, directors, and employees (including House
11 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
12 this Action;

13 (c) Experts (as defined in this Order) of the Receiving Party to
14 whom disclosure is reasonably necessary for this Action and who have signed an
15 “Acknowledgment and Agreement to Be Bound”

16 (d) the Court and its personnel;

17 (e) court reporters and their staff;

18 (f) professional jury or trial consultants, mock jurors, and
19 Professional Vendors to whom disclosure is reasonably necessary for this Action
20 and who have signed the “Acknowledgment and Agreement to Be Bound”

21
22 (g) the author or recipient of a document containing the
23 information or a custodian or other person who otherwise possessed or knew the
24 information;

25 (h) during their depositions, witnesses, and attorneys for witnesses,
26 in the Action to whom disclosure is reasonably necessary provided:

(1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and

(2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the

Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission or another court so orders. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**8. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a NonParty’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a

1 reasonably specific description of the information requested; and

2 (3) make the information requested available for inspection
3 by the Non-Party, if requested.

4 (c) If the Non-Party fails to seek a protective order from this Court
5 within 14 days of receiving the notice and accompanying information, the
6 Receiving Party may produce the NonParty's confidential information responsive
7 to the discovery request. If the Non-Party timely seeks a protective order, the
8 Receiving Party shall not produce any information in its possession or control that
9 is subject to the confidentiality agreement with the Non-Party before a
10 determination by the Court. Absent a court order to the contrary, the Non-Party
11 shall bear the burden and expense of seeking protection in this Court of its
12 Protected Material.

13
14 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
16 Protected Material to any person or in any circumstance not authorized under this
17 Stipulated Protective Order, the Receiving Party must immediately:

18 (a) notify in writing the Designating Party of the unauthorized
19 disclosures,

20 (b) use its best efforts to retrieve all unauthorized copies of the
21 Protected Material,

22 (c) inform the person or persons to whom unauthorized disclosures
23 were made of all the terms of this Order, and

24 (d) request such person or persons to execute the
25 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
26 A.

**10. INADVERTENT PRODUCTION OF PRIVILEGED OR
OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the Court if the Court so allows.

11. MISCELLANEOUS

11.1 Right to Further Relief.

Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

11.2 Right to Assert Other Objections.

By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

11.3 Filing Protected Material.

A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal

1 pursuant to a court order authorizing the sealing of the specific Protected Material
2 at issue; good cause must be shown in the request to file under seal. If a Party's
3 request to file Protected Material under seal is denied by the Court, then the
4 Receiving Party may file the information in the public record unless otherwise
5 instructed by the Court.

6 **12. FINAL DISPOSITION**

7 After the final disposition of this Action, within 60 days of a written request by
8 the Designating Party, each Receiving Party must return all Protected Material to
9 the Producing Party or destroy such material. As used in this subdivision, "all
10 Protected Material" includes all copies, abstracts, compilations, summaries, and
11 any other format reproducing or capturing any of the Protected Material. Whether
12 the Protected Material is returned or destroyed, the Receiving Party must submit a
13 written certification to the Producing Party (and, if not the same person or entity, to
14 the Designating Party) by the 60 day deadline that (1) identifies (by category,
15 where appropriate) all the Protected Material that was returned or destroyed and
16 (2) affirms that the Receiving Party has not retained any copies, abstracts,
17 compilations, summaries or any other format reproducing or capturing any of the
18 Protected Material. Notwithstanding this provision, counsel are entitled to retain an
19 archival copy of all pleadings, motion papers, trial, deposition, and hearing
20 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
21 reports, attorney work product, and consultant and expert work product, even if
22 such materials contain Protected Material. Any such archival copies that contain or
23 constitute Protected Material remain subject to this Protective Order as set forth in
24 Section 3 (DURATION).

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED

DATED: July 7, 2016

JEAN ROSENBLUTH

Honorable Jean P. Rosenbluth

United States District Magistrate Judge